

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

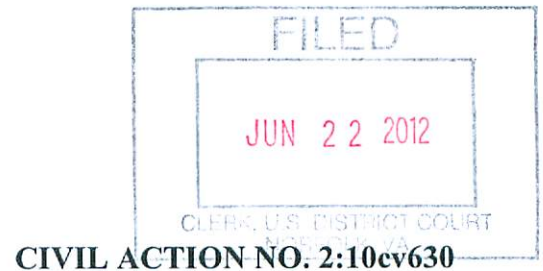
BRADLEY D. GREGORY, et al.,

Plaintiffs,

v.

FEDEX GROUND PACKAGING SYSTEM INC.,

Defendant.



ORDER

Before the Court are Defendant's Motions to Dismiss Plaintiffs' Sixth Amended Complaint ("12(b)(6) Motion to Dismiss"), ECF No. 290, and Defendant's Motion to Dismiss the Non-Norfolk Plaintiffs' Claims for Misjoinder, or, in the Alternative, to Sever and Transfer Those Claims ("Motion to Dismiss or Sever and Transfer"), ECF No. 294. The 12(b)(6) Motion to Dismiss also requests that the Court strike Plaintiffs' claims under the Fair Labor Standards Act ("FLSA"), pursuant to Rule 12(f) of the Federal Rules of Civil Procedure. On February 17, 2012 and February 23, 2012, these motions was referred to the Honorable United States Magistrate Judge F. Bradford Stillman ("Judge Stillman"), pursuant to the provisions of 28 U.S.C. Section 636(b)(1)(B) and Rule 72(b) of the Federal Rules of Civil Procedure for a report and recommendation.

This matter has been pending in various courts since 2003; thus, the Court reviews herein only the procedural history most relevant to the instant motions. In accordance with an order Judge Stillman issued on November 21, 2011, Plaintiffs filed a Sixth Amended Complaint on December 13, 2011. The Complaint asserts claims for fraud, rescission, and violations of the

Fair Labor Standards Act's ("FLSA") minimum wage and overtime provisions, and it seeks a declaratory judgment. Defendant filed the 12(b)(6) Motion to Dismiss on January 12, 2012 and the Motion to Dismiss or Sever and Transfer on January 24, 2012. After the motions were fully briefed, Judge Stillman held a hearing on both motions on April 10, 2012. Following the hearing, Judge Stillman issued the United States Magistrate Judge's Report and Recommendation ("Report") on May 9, 2012. The Report made the following recommendations to the Court: (1) GRANT IN PART the 12(b)(6) Motion to Dismiss as to Plaintiffs' claims under the Declaratory Judgment Act ("DJA") and Plaintiffs' FLSA minimum wage claims; (2) DENY IN PART the 12(b)(6) Motion to Dismiss as to Plaintiffs' fraud, rescission, and FLSA overtime claims; (3) DENY Defendant's Motion to Strike Plaintiffs' FLSA claims; and (4) GRANT IN PART the Motion to Dismiss or Sever and Transfer by severing and consolidating the Non-Norfolk Plaintiffs' claims; and (5) DENY IN PART the Motion to Dismiss or Sever and Transfer by declining to dismiss the Non-Norfolk Plaintiffs' claims. *See* Report at 41-42.

By copy of the Report, each party was advised of their right to file written objections to Judge Stillman's findings and recommendations within fourteen (14) days from the date of the mailing of the Report. On May 30, 2012, the parties filed a "Joint Stipulation" indicating that they did not intend to file objections to the Report. ECF No. 313. In the Joint Stipulation, the parties further agreed that, with the Court's approval, Plaintiffs would have thirty (30) days from the date the Court enters its order as to the Report to file their amended complaints, and that Defendant would have thirty (30) days from the filing of the amended complaints to file its responsive pleadings, including motions to dismiss.

Having reviewed the record, the Court does hereby accept the findings and recommendations set forth in Judge Stillman's Report.

Accordingly, it is **ORDERED** that Defendant's Motion to Strike Plaintiffs' FLSA claims is **DENIED**.

IT IS FURTHER ORDERED that Defendant's 12(b)(6) Motion to Dismiss, ECF No. 290, is **GRANTED IN PART** as to Plaintiffs' DJA claims and FLSA minimum wage claims, and **DENIED IN PART** as to Plaintiffs' fraud, rescission, and FLSA overtime claims. Plaintiffs' DJA claims and FLSA minimum wage claims are hereby **DISMISSED** without prejudice.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss or Sever and Transfer, ECF No. 294, is **GRANTED IN PART** as to the Motion to Sever and **DENIED IN PART** as to the Motions to Dismiss and to Transfer. Accordingly, the Non-Norfolk Plaintiffs' claims are hereby **SEVERED**, pursuant to Federal Rule of Civil Procedure 21, and **CONSOLIDATED**, pursuant to Federal Rule of Civil Procedure 42.


IT IS FURTHER ORDERED that Plaintiffs shall file their amended complaints in accordance with Federal Rule of Civil Procedure 9(b) within thirty (30) days of the date of this Order.

IT IS FURTHER ORDERED that Defendant shall file its responsive pleadings to Plaintiffs' amended complaints within thirty (30) days of the date that Plaintiffs file their complaints.

The Clerk shall mail a copy of this Order to counsel for all parties.

IT IS SO ORDERED.

Norfolk, Virginia
June 22, 2012



Raymond A. Jackson
United States District Judge